MAY MEETING.

The Society held their stated monthly meeting on Thursday, May 14, at noon, in the Dowse Library; the President, Hon. ROBERT C. WINTHROP, in the chair.

The Librarian announced donations from the Chicago Historical Society; the Suffolk Insurance Company; the American Insurance Company; Dr. George Derby; David Ricketson, Esq., New Bedford; Rev. Dr. Fuller, Andover; Dr. Samuel H. Hurd, Somerville; William H. Whitmore, Esq.; Sylvester D. Willard, M.D., Albany; Wm. B. Fowle, Esq.; Rev. Caleb D. Bradlee; L. A. Huguet Latour, Esq., Montreal; Lieut. Geo. F. Emmons, U.S.N.; Rev. D. P. Henderson, Louisville, Ky.; and from Messrs. Barry, Brigham, Clifford, Everett, Robbins, Savage, and Winthrop, of the Society.

The President communicated a circular letter from a French commissioner, charged with the erection of a statue to Geoffroy-Saint-Hilaire, soliciting subscriptions for that object.

Also a letter from Charles J. Hoadly, State Librarian of Connecticut, dated May 11, 1857, announcing the gift, on the part of that State, of a copy of the Colonial Records from 1638 to 1649.

The President read the following interesting communication from Hon. William Willis, President of the Maine Historical Society, accompanying two coins, which were discovered on Richmond Island, May 11, 1855: —

PORTLAND, May 2, 1857.

Hon. ROBERT C. WINTHROP,
President of the Massachusetts Historical Society.

DEAR SIR, — I send you with this a *silver* coin of the reign of Queen Elizabeth, and a *gold* coin of the reign of Charles I., a donation to the Massachusetts Historical Society from Dr. John M. Cummings, of this city.

These coins, with others of the reigns of Elizabeth, James I., and Charles I., were found on Richmond Island, May 11, 1855. Richmond Island, now owned by Dr. Cummings, lies off the southern shore of Cape Elizabeth, half a mile distant from the main-land, and nine miles distant from Portland. It contains about two hundred acres, and has been occupied by but a single family for many years.

The first settlement upon it, of which we have any account, was by Walter Bagnall in 1628, who carried on a profitable trade with the Indians, and was killed by them for his extortion, Oct. 3, 1631. Winthrop, in his "Journal," says he accumulated a large property by his traffic.

Dec. 1, 1631, the island, with the southern part of Cape Elizabeth, was granted by the Council of Plymouth to Robert Trelawny and Moses Goodyear, merchants in Plymouth, England. They appointed John Winter, who then resided on the territory, and was interested in the patent, as their agent. Winter soon after built a ship there, which was probably the first regular trader between the two worlds; established a Colony; and carried on at that place a larger commercial business than was then done upon the New-England coast. Lumber, fish, furs, oil, &c., were sent to Europe; and there were received, in return, wines, liquors, guns, ammunition, and such merchandise as was suited to the Indian trade and to sustain the Colony. Several ships were employed in this business. In 1635, a ship of eighty tons, and a pinnace of ten tons, arrived at the island. In 1638, Winter had sixty men employed there in the fisheries; and, the same year, Trelawny sent a ship of

three hundred tons, laden with wine and spirits, to the island. Jocelyn, the voyager, speaking of the trade there at that time, says, "The merchant comes in with a walking tavern, — a bark laden with the legitimate blood of the rich grape, which they bring from Phial, Madera, and Canaries."

In 1639, Winter sent home, in the bark "Richmond," six thousand pipe-staves, valued at £8. 6s. a thousand. An Episcopal church was established there, in which Robert Gibson, whom Winthrop calls a *scholar*, officiated from 1637 to 1640, and was the first Episcopal church established in New England. Gibson was succeeded by Rev. Robert Jordan, who married Winter's only daughter, and inherited his estate. He fought long and bravely for Episcopacy; and, at much peril and personal inconvenience, sternly resisted the persevering assaults upon it by the magistracy of Massachusetts.

Trelawny died in 1644, and Winter in 1645. From that period, the Colony, its quickening spirits being gone, declined; and commercial operations on the island were soon after abandoned.

The coins referred to were found in a stone pot of common ware, but of a beautiful shape, resembling a globe lantern. It would probably hold a quart, and was found about a foot below the surface of the earth, on a slope of land descending northwesterly to the shore, and about four rods from it. There were traces of the foundation of buildings near the spot, the remains of a chimney, and a cavity used as a cellar. The particular place had not been ploughed nor cultivated within the memory of the present generation, until the year previous to the discovery. The next year the ploughing was deeper; and as the ploughman was holding his plough, and his son driving, the pot was turned up from its hiding-place. When the boy picked it up, and showed it to his father, he exclaimed, "It is a rum-jug of the old settlers: throw it over the bank." On second thought, he told him to lay it one side on a pile of stones. The pot was apparently filled with caked earth: no-

thing more could be seen. A younger son of the ploughman, sitting upon the rocks, began to pick the earth from the pot, and soon came to the coin. Their surprise may well be conceived. On examination, the coin appeared to be regularly arranged in the bottom of the pot, — the silver on one side, the gold on the other, — and a fine gold signet-ring in the centre.

On the next day, being notified by Dr. Cummings of the discovery, I went with him, accompanied by the Hon. Mr. Davies, and his son Dr. Davies, to the island, and carefully examined the coin, and explored the locality. We found the silver considerably discolored; the gold very little. There were thirty-one pieces of silver, of which twenty-three were shillings, sixpences, and groats, of the reign of Elizabeth; four shilling-pieces and one sixpence of the reign of James I.; and one shilling and one sixpence of the reign of Charles I. The gold consisted of ten sovereigns of the reign of James I., which were generally called *units*, from their being the first issued under the united crowns, and three half-sovereigns of the same reign; seven sovereigns of Charles I.; and one curious and beautiful Scottish coin, half-sovereign size, bearing date 1602, — the last year of James as King of Scotland. All the coins are hammered, and are thinner and broader than modern coins of the same value. Milling was not generally used until the time of Charles II.; although some experiments of it were tried in Elizabeth's reign, but proved too expensive and imperfect for general use. The impressions on the gold coins are clear and distinct: they are less worn than the silver, and nearly as bright as when issued.

Part of the fracture of the pot was fresh, as if occasioned by the recent ploughing: the other was of an earlier date, and made, as is conjectured, by the ploughing of the previous year. It is probable, from appearances and from the absence of pieces, that it was a broken vessel when the coin was put in it. We found, in the vicinity of the place, broken pottery, pipes, an iron spoon of ancient form, part of a large glass bottle,

charcoal, nails, spikes, &c., turned up and scattered about by the plough. No further coin, after a careful search, was found.

The question now arises, How came this treasure there? No certain answer can be given. I have no doubt that the deposit is a solitary one, and can afford no encouragement to the idle rumors which have long prevailed, that large sums of money were many years ago concealed by pirates on this and other islands in our bay. The probability is that the deposit was made by some inhabitant of the island, or transient person, for security; and that he suddenly died, or was driven away or killed by the Indians, without disclosing the fact.

My conjecture is that the deposit was made as early as the death of Winter, in 1645; and I go farther, and express the belief that the money is connected with the fate of Walter Bagnall, who was killed by Sagamore Squidraket and his party, Oct. 3, 1631; that it was, in fact, a part of his unjustly earned estate. Bagnall had one companion with him, whom Winthrop calls John P——. Bagnall had acquired a large property, — £400, it is said. Winthrop says he was a wicked fellow, and exasperated the Indians by his hard usage. The latest of the coinage was of the time of the first Charles; and, of the fifty-two pieces, nine only were of his reign, and these must have been coined before the breaking out of the civil war in 1642; for the king's coinage after that event was of different, and generally of much coarser, execution than that issued before. That the deposit must have had an early date — before the commencement of the civil war — is evident from the fact that there is no piece of a later period than 1642; and there is nothing to show that any of it is of a later date than 1631.

In 1632, the expedition fitted out in Boston and "Piscataqua" to pursue Dixey Bull, a buccaneer, — who had ravaged Pemaquid and plundered vessels, — stopped, on their return, at Richmond Island, and hung Black Will, an Indian, who

had been concerned in the murder of Bagnall. My solution is that this coin was concealed by Bagnall's servant, or by some of the Indians, perhaps Black Will, and that it had lain in its concealment until its recent discovery. That the treasure can have no connection with the Indian war of 1675 seems clear from the fact, that the collection contains no coin of a date within *thirty* years of that event.

The silver coin I now transmit to you is a hammered shilling, without date, and bears the same effigy, title, and motto that were placed on all the silver coin of that reign. They are as follows: On the face is the profile head of the queen, crowned; the rose, an old emblem introduced by the early sovereigns, behind it; around it her title, ELIZABETH. D. G. ANG: FR: ET: HI: REGINA. On some of the coins the title is more abridged. On the reverse are the arms of England, which embrace the emblems of France and Ireland, traversed by the cross, with the motto, POSUI. DEV. ADJVTOREM. MEV.; that is, *Posui Deum Adjutorem Meum*, "I have made God my helper." This motto was first adopted by Edward III., and continued to the time of Charles I. The sixpences, and some of the smaller pieces, were dated for the first time in this reign, but not the shillings nor the gold coin.

The accompanying gold coin is a hammered sovereign, or unit, of the early part of the reign of Charles I. It represents the head of the king, crowned and youthful, with a double ruff around his neck, and a robe over his shoulders. The figures XX. behind his head denote the value of the coin, which is twenty shillings. His title on the margin is "Carolus D. G. Mag. Brit. Fra. et. Hi. Rex.;" on the reverse, a new motto is introduced, not used by any former sovereign, *Florent Concordiâ Regna*, "Nations flourish by peace;" in the centre are the national arms, quartered, as usual, on a shield, which, in the present case, is garnished: it is sometimes plain.

I hope these interesting relics of the past, so happily brought forth to instruct, and gratify the curiosity of the present age,

will be acceptable to your venerable Society; and that the historical sketch I have added of a noted spot in our early annals, of which your renowned ancestor has given us the first notice, will not be tedious or unwelcome to yourself.

I am the Society's ever-faithful friend,
And your obedient servant,
WM. WILLIS.

The communication of Mr. Willis was referred to the Publishing Committee, and the President was requested to present the thanks of the Society to Dr. Cummings for his valuable gift.

Dr. ROBBINS, from the Committee on the By-laws, reported that, for reasons which were stated, it was necessary to request a postponement of the full report of said Committee to a future meeting. This verbal report was accepted, and the request was granted.

Mr. WASHBURN communicated a valuable paper in relation to the circumstances under which slavery ceased to exist in Massachusetts, which was referred to the Publishing Committee, and printed in the fourth volume of the Fourth Series of the Collections. It is as follows: —

EXTINCTION OF SLAVERY IN MASSACHUSETTS.

BY HON. EMORY WASHBURN.

Much interest has been felt, of late years, to know when, and under what circumstances, slavery ceased to exist in Massachusetts.

I recollect, among other evidences of this, being applied to by Mr. Webster, a few years before his death, for such facts as

I happened to possess on the subject, in order to aid him in the investigation he was making in regard to the extinction of slavery here, which he said he had not been able satisfactorily to determine.

The generally received notion is, that slavery was extinguished by the adoption of the Constitution of Massachusetts, which declared all men free and equal; and it is undoubtedly true, that, soon after it was adopted, it was definitely and definitively declared, that the relation of master and slave did not exist within the Commonwealth.

But, could we arrive at the true history of the state of public sentiment, — a power often quite as strong as the law, and always, in some measure, an exponent of the law itself, — we should, I think, find that the Constitution, with its Bill of Rights, was literally a *declaration* of what the people regarded as already their rights, rather than an exposition of any newly adopted abstract principles or dogmas to be wrought out into a practical system by any course of future legislation under a new regime.

There is no question that slavery and slaves existed here in some form, and to some extent, from the time Maverick was found dwelling on Noddle's Island in 1630. Men and women were bought and sold in market, inventoried as property, and held to have the settlements of their masters in the character of slaves.

But, after all, the laws on this subject, as well as the practice of the government, were inconsistent and anomalous; indicating clearly, that, whether Colony or Province, so far as it felt free to follow its own inclinations, uncontrolled by the action of the mother country, Massachusetts was hostile to slavery as an institution.

Thus we find, among other evidence of the prevalence of this sentiment, one of the articles of the "Body of Liberties," which are preserved in the eighth volume, Third Series, Historical Collections, declares, "There shall never be any bond

slaverie, villenage, or captivitie, unless it be lawful captives, taken in just wars, and such strangers as willingly sell themselves *or are sold to us*." And another guaranties to all men, whether "inhabitant or foreigner, free or not free," liberty to "come to any public court, council, or town-meeting, and, either by speech or writing, to move any lawful or seasonable or material question, or present any necessary motion, complaint, petition, bill, or information," &c.; clearly recognizing them alike as having the rights of suitors in courts, and the qualified rights of citizens, so far, at least, as to be heard as petitioners. And this, it will be remembered, was as early as 1641.

But I pass over the various laws and acts of the colonists upon this subject, to notice the case of James *vs.* Lechmere, which was decided in 1769, and which involved the right of a master to hold slaves here, as we are told in Dr. Belknap's letter to Judge Tucker, 4 Historical Collections, First Series, 202.*

This, it will be recollected, was nearly two years before the famous decision of Lord Mansfield in Somersett's case; and, if Dr. Belknap's account of the matter be correct, the decision rested substantially upon some of the same grounds as that on which Lord Mansfield based his opinion. "On the part of the blacks," says Dr. Belknap, "it was pleaded that the Royal Charter expressly declared all persons *born* or *residing* in the Province to be as free as the king's subjects in Great Britain; that, by the laws of England, no man can be deprived of his liberty but by the judgment of his peers; that the laws of the Province respecting an evil existing, and attempting to mitigate or regulate it, did not authorize it;" &c.

* The term at which judgment in this action was rendered was held in Suffolk, Oct. 31, 1769. The action was commenced in the Inferior Court of Common Pleas, May 2, 1769, and the plaintiff declared in trespass for assault and battery, and imprisoning and holding the plaintiff in servitude from April 11, 1758, to the date of the writ. Judgment in the lower court was rendered for the defendant. The plaintiff appealed; and, in the Superior Court, the defendant was defaulted, and judgment was rendered for an agreed sum, with costs.

That these positions were not lightly or unadvisedly taken, we may be assured from the fact that they were urged by such a man as Jonathan Sewall, at that time the Attorney-General of the Province, and a profound and able lawyer.

The decision of the court was in favor of the liberty of the negro.

And, if this were the place for speculation, I should feel myself warranted in assuming that our courts always regarded, and, as early as 1769, solemnly adjudged, the attempt to hold any person not captured and brought and sold here, but *born here*, as a slave, not justified by law, although he might be the child of a slave. This would not be inconsistent with the extract I have given from the "Body of Liberties," and is in accordance with what Dr. Belknap says was the ground taken in some cases, — "that though the slavery of the parents be admitted, yet no disability of that kind could descend to children."

This conjecture is, moreover, strengthened by the arguments by which it was attempted to sustain slavery as an institution after the adoption of the Constitution; viz., that the declaration in the Bill of Rights as to freedom or equality referred to *the children of slaves*, and did not emancipate such as could be proved to have been actually sold and purchased as such before its adoption.

I have thought these explanations a necessary and proper introduction to a brief history which I propose to offer of the case, or rather cases, — for there were three in number, — involving the same point, in which, by the verdict of a jury, with the approbation of the highest court, it was declared authoritatively that slavery no longer existed in Massachusetts.

The cases to which I allude were Quork Walker *vs.* Nathaniel Jenison, Nathaniel Jenison *vs.* John Caldwell and Seth Caldwell, and the Commonwealth *vs.* Nathaniel Jenison. The civil actions were commenced in the Inferior Court of Common Pleas for the county of Worcester, at the June Term, 1781.

The first of these was trespass for an alleged assault and beating of plaintiff by the defendant, with the handle of a whip, on the 30th of the previous April.

The answer of the defendant alleged that one Caldwell, being possessed of said Quork, "as of her own proper negro slave," married and became the wife of defendant, whereby he became possessed of said Quork "as of his own proper negro slave;" and "prayed judgment of the court if said Quork to his said writ ought to be answered."

The plaintiff's replication was, that he was a freeman, and not the proper negro slave of defendant; and this was the issue raised by the pleadings of the parties, to be tried by the jury.

In the second of the above actions, Jenison sued the Caldwells, in an action *of the case*, for enticing away the same Quork, a negro man and servant of the plaintiff, from his service, and rescuing him out of the plaintiff's hands, and preventing his reclaiming and reducing his said servant to his business and services, they knowing said negro to be the plaintiff's servant. He laid his damages at a thousand pounds. The case was tried at the Inferior Court upon the *general issue*, and a verdict rendered for the plaintiff for twenty-five pounds. From this judgment the defendants appealed to the Superior Court; and a trial was had there, in September, 1781, when a verdict was rendered for the defendants.

The indictment above mentioned was for beating said Quork, and resulted in the conviction of the defendant.

The court before which the first of the above cases was tried was held by Moses Gill, Chief Justice; and Samuel Baker and Joseph Dorr, Assistant Justices.

The counsel for the plaintiff — the negro — were Caleb Strong and Levi Lincoln; for the defendant, Judge Sprague and William Stearns: and abler advocates could not, then or since, have been easily found to sustain the cause of the slave.

Neither of the judges were educated as lawyers. The Chief Justice belonged to Princeton, and was afterwards known as

Governor Gill, having become the acting Governor upon the death of Governor Sumner in 1799. He was bred, and for many years engaged in the business of, a merchant. Baker was a farmer in Berlin; and Dorr, a farmer at that time in Ward, now Auburn, though, a short time before that, residing in Mendon. They were therefore probably, like the jury, the exponents of public sentiment in the direction they gave to the trial, rather than the organs of any profound legal or constitutional views in regard to the rights of the parties.

The verdict of the jury was, in substance, that said Quork "is a freeman, and not the proper negro slave of the defendant;" and they assessed damages against the defendant in sixty pounds, and judgment was rendered accordingly.

From this judgment the plaintiff appealed, as the defendants did in the other case, as has been already stated. But, after the decision of the latter case in the defendant's favor, the plaintiff failed to prosecute his appeal in this; so that, in all the cases, the final judgment of the court was adverse to the claims of the master, and in favor of the negro, declaring and regarding him as a free man.

I have before me the brief used by Mr. Lincoln on the trial of Jenison *vs.* Caldwell before a jury in the Superior Court, the substance of which I propose to transcribe; the same having been kindly furnished me by his son, for many years Governor of the Commonwealth.

Mr. Lincoln was one of the ablest lawyers in the State. His business was very extensive; and he was engaged as leading counsel in some of the most important causes in several of the counties in Massachusetts, as well as in Maine. He was not only a profound and learned lawyer, but an eloquent and popular advocate. He was, at this time, in the thirty-second year of his age. In 1800, he was elected to Congress; and, the following year, received the appointment of Attorney-General of the United States from President Jefferson, between whom and himself there was a great personal intimacy and

regard. In 1808, he discharged, for more than half a year, the duties of Governor, upon the death of Governor Sullivan; and, in 1811, was appointed a Judge of the Supreme Court of the United States, which office he was obliged to decline by the loss of vision, which became almost total towards the close of his life.

Governor Strong was four years the senior of Mr. Lincoln in age; but neither acted as what is known as "senior counsel," since a full closing argument was addressed to the jury by each of the counsel, one speaking in behalf of one of the defendants, and the other for the other.

Governor Strong is too well known in the history of Massachusetts to render it necessary to say a word of him personally. He was the leading advocate in the western and middle parts of the State at the bar, and a zealous champion in the cause of the oppressed.

Though the names of the counsel who were opposed to them may be less generally known or remembered, they were men of high rank and reputation.

Mr. Stearns was of Worcester, and about the same professional age as Mr. Lincoln, and in every way a respectable lawyer; but he died early, before attaining a distinguished eminence in his profession.

Judge Sprague belonged to Lancaster. He had been a member of the bar before the Revolution, and was a few years older than either Mr. Lincoln or Mr. Strong, and was then in the vigor of his manhood and power. He was, however, rather a wise and learned lawyer than an eloquent advocate. His business extended into several counties, in which he divided the field with Lincoln and the Strongs, Simeon and Caleb, in influence and business. He was one of the few who were appointed barristers after the Revolution; and, in 1798, was made Chief Justice of the Court of Common Pleas for the county of Worcester.

Such were the counsel in those memorable causes.

The Superior Court, before which the latter case was tried, consisted of Hon. N. P. Sargent, David Sewall, and James Sullivan.

The Chief Justice, William Cushing, was not present at the term when the cause was heard.

Judge Sargent was of Haverhill, a sound lawyer and upright judge, and succeeded Chief Justice Cushing upon his appointment to the United-States Court. At the time of this trial, he was fifty years of age, and had then held a place upon the bench six years.

Judge Sewall belonged to York. He was then forty-six years of age, had been a leading lawyer in that part of the State in which he resided, was appointed to this court in 1777, and subsequently was appointed Judge of the District Court of the United States for the district of Maine. He was a classmate and personal friend of John Adams, and had a high reputation for integrity and uprightness.

The strong man of the court, however, was James Sullivan. A self-made man, he had risen to the first rank in his profession, and been actively engaged in the events of the Revolution, and took a prominent part in the formation of the Constitution. No further evidence of his eloquence or power as an advocate and a statesman need be given than the rank he held among such names as Dana, Lowell, Parsons, Gore, and Dexter.

He was appointed to the bench of the Superior Court in 1776, when thirty-two years of age; and held the office till 1782, when he resigned, and returned to the bar.

In 1790, he was appointed Attorney-General; and, in 1807, was chosen Governor. He died in the office; and was succeeded, as has already been stated, for the balance of his term, by Lieutenant-Governor Lincoln.

It will be perceived, that those who took part in the decision of this question were among the leading minds of the Commonwealth. They had been witnesses of, and taken a more or

less prominent part in, the events and discussions of the Revolution; and were especially well qualified to understand and appreciate the motives, grounds, and leading principles, of the Constitution.

The whole subject had agitated the public mind for several years; and one Constitution, prepared in 1777–8 and submitted to the people, had been rejected by a vote of more than five to one; one reason for which is said to have been, that it contained no Bill of Rights.

The general sentiment on the subject of slavery was expressed the same year by an Act of the Legislature, forbidding the sale of a number of slaves taken on board an English prize-ship and brought into Salem, and ordering them to be set at liberty.

Such, in brief, were the circumstances under which this great question of human freedom was to be decided, to serve as a precedent, for all coming time, to Massachusetts; and such were the men who took part in its decision.

It was not, as already stated, determined so much by any positive language or enactment in the Constitution, as by that all-pervading sense of the community, that the time had come when that slavery, against which they had been so long struggling, was incompatible with their character as a free and independent State, and ought to be suppressed.

The strongest expression in the Constitution, perhaps, is the opening declaration of the Bill of Rights, that "all men are born free and equal," &c. Nor can too much credit be ascribed to the Hon. John Lowell in procuring the insertion of this clause, since it took from the Legislature the power of ever legalizing slavery, without a radical amendment, by the people, of the organic law of the Commonwealth. But it will be perceived that the advocate for the slave, in this case, rested his claim upon the incompatibility of slavery with our condition as a people, quite as much as upon any new right declared or sustained by the Constitution. Indeed, there is nothing in the

Constitution which expressly abrogates, or even recognizes, slavery as an existing political institution.

The counsel for the master rested his rights, among other things, upon the following points : —

In the first place, that the negro was a servant by his own consent, and therefore the defendant was liable for enticing him away.

But to this it was answered, that, if such were the case, there must be some evidence of that consent, either express or implied, and the terms of it must be understood.

Besides, some term of time must be agreed upon ; for if he consented to be the plaintiff's servant, and no time were agreed upon, it would be only during his own will, which he may put an end to whenever he pleases.

But that, in fact, there was no evidence of consent in the case.

In the next place, the plaintiff insisted he was his servant by virtue of a bill of sale, by which he became the property of Caldwell, from whom he passed to the plaintiff as husband of his owner; and such a bill of sale was produced on the trial.

And the general right of holding property in slaves was sustained upon several grounds : —

1st, It is declared in Exodus, of a man's servant, that " he is his money."

But, said the defendant's counsel, " It is indeed said in Exodus, that a man's servant is his money; and, from this, the counsel on the other side argues in favor of slavery."

" But are you to try cases by the old Jewish law ? "

This was an indulgence to that nation, and they could only make slaves of the heathen around them. But even by their severe laws, which required an eye for an eye and a tooth for a tooth, men were not allowed to make a slave of a brother. They might not make a slave of him, though they might hire him.

In the present case, Quork was their brother: they all had a common origin, were descended from a common parent, were clothed with the same kind of flesh, breathed the same breath of life, and had a common Saviour.

It was contended that the custom and usage of the country considered slavery as right.

But, it was replied, the objection to this is, that customs and usages which are against reason and right are void.

So far as this question depends upon the laws of the State, any laws against the laws of nature are void; and that laws upholding slavery are against the laws of nature, he cited 1 Blackstone, 91, 131, 423.

"But is he a slave by the laws of the country?" If there are laws of the State which derogate from the rights recognized by the common law, they are to be strictly construed; and such a law is contrary to the Constitution, as well as to the laws of nature. "The air of America is too pure for a slave to breathe in."

The counsel on the other side insist that slavery is a respectable affair in this country. But the question to be decided was not whether it was respectable or not.

Has the defendant enticed away the plaintiff's servant, as is claimed in his writ?

When a fellow-subject is restrained of his liberty, it is an attack upon every other subject, and every one has a right to aid him in regaining his liberty.

What, in this respect, are to be the consequences of your verdict? Will it not be tidings of great joy to this community? It is virtually opening the prison-doors, and letting the oppressed go free!

Could they expect to triumph in their struggle with Great Britain, and become free themselves, until they let those go free who were under them? Were they not acting like Pharaoh and the Egyptians, if they refused to set these free?

But the plaintiff insists that it is not true, as stated in the

Constitution, that all men are born free ; for children are born and placed under the power and control of their parents.

This may be. But they are not born as slaves: they are under the power of their parents, to be nursed and nurtured and educated for their good.

And the black child is born as much a free child in this sense as if it were white.

Then, again, it is contended that the Constitution only determines *that those that have been born since its adoption are equal and free*. And they admit, that, since that time, everybody is born free ; and they say, that, by a different construction, people will lose their property.

This is begging the question. Is he property ? If so, why not treat him as you do an article of stock, — an ox or a horse ?

It is again said, that it is for the jury to inquire whether the custom of slavery is a good or a bad custom.

But, if tried by that test, is it not a bad custom ?

What are its consequences ? How does slavery originate ? Kidnapping and man-stealing, in the negro's country ; while its consequences here are, that the infant may be wrested from its mother's breast, and sold or given away like a pig or a puppy, never more to be seen by the mother.

Is not this contrary to nature ? Does not Heaven say so in the strongest manner ? Is not one's own child as dear to the black subject as to the white one ? Can a mother forget her sucking child ? Do not even the beasts and the birds nurture and bring up their offspring, while acting from their instincts ?

But, under such a law as this, the master has a right to separate the husband and wife. Is this consistent with the law of nature ? Is it consistent with the law of nature to separate what God has joined together, and declared that no man should put asunder ?

The opposite counsel, however, urge, that, by the laws of England, a person may, for a crime, be sent into other parts

of the world, away from parents, sisters, and brothers, never more to return.

In the present case, a subject of this free Commonwealth may be taken, without crime, from his friends, his father and mother, and sisters and brothers, and shipped off with spavined horses, as an article of merchandise, to the West Indies.

They say, that, in the early history of the country, slaves were needed to cultivate the earth; but, instead of that, now, the employing of them does an actual injury to the poorer classes of people, by being in the way of their finding employment.

Is he a slave by the custom of the country? A custom must be general to be binding as such. This is not a *general* custom. It has ever been against the principles of some to make slaves, and some have freed them.

It must, moreover, be undisputed in order to be binding. But this has always been disputed, — in the General Court, in the courts of justice, and elsewhere.

It must, besides, not be against reason.

In making out that negroes are the property of their masters, the counsel for the plaintiff speak of lineage, and contend that the children of slaves must be slaves in the same way that, because our first parents fell, we all fell with them.

But are not all mankind born in the same way? Are not their bodies clothed with the same kind of flesh? Was not the same breath of life breathed into all? We are under the same gospel dispensation, have one common Saviour, inhabit the same globe, die in the same manner; and though the white man may have his body wrapped in fine linen, and his attire may be a little more decorated, there all distinction of man's making ends. We all sleep on the same level in the dust. We shall all be raised by the sound of one common trump, calling unto all that are in their graves, without distinction, to arise; shall be arraigned at one common bar; shall have one common Judge, and be tried by one common

jury, and condemned or acquitted by one common law, — by the gospel, the perfect law of liberty.

This cause will then be tried again, and your verdict will there be tried. Therefore, gentlemen of the jury, let me conjure you to give such a verdict now as will stand this test, and be approved by your own minds in the last moments of your existence, and by your Judge at the last day.

It will then be tried by the laws of reason and revelation.

Is it not a law of nature, that all men are equal and free ?

Is not the law of nature the law of God ?

Is not the law of God, then, against slavery ?

If there is no law of man establishing it, there is no difficulty. If there is, then the great difficulty is to determine which law you ought to obey; and, if you shall have the same ideas as I have of present and future things, you will obey the former.

The worst that can happen to you for disobeying the former is the destruction of the body; for the last, that of your souls.

Though this sketch must, from the nature of the case, be little more than a meagre outline of the respective grounds taken by the counsel in this case, enough is seen to justify the remark, that the case turned and was decided upon the strong, prevailing sentiment that pervaded the community, rather than the positive provisions of the Constitution.

These, indeed, were sufficient to sustain the court and jury in the conclusions to which they came; yet I apprehend it was accomplished more by relieving the courts from the overshadowing influence of the crown, by a final act of independent legislation, like the adoption of an organic law as a State, than by any new form of declaring personal rights or the popular will.

In 1767 and in 1774, laws against the slave-trade and slavery had been passed by the Legislature, which were defeated by the governors, acting under instructions from home; both

Governors Hutchinson and Gage refusing, for that reason, to sign such bills.

This is what the counsel for the slave in the case of Quork alluded to, when they insisted that slavery had always been opposed here, — "in the General Court, the courts of justice, and elsewhere."

And this is further illustrated by the fact, that while the New-Hampshire courts, construing a similar provision in the Constitution of that State, are said to have adopted the views contended for by the counsel for the master in the case in our courts, — viz., that it only emancipated such as were born after its adoption, — our courts made no such distinction, but held the declaration as of universal application.

Nor could this have been done hastily or unadvisedly. Both of the counsel for the slave, though neither of those for the master, and one of the Judges of the Inferior Court, and all the Judges of the Superior Court who sat in the case, as well as the Chief Justice, had themselves been members of the Convention which formed the Constitution, and must have understood the intention of its framers upon a subject that had so often and so recently been agitating the public mind. And their decision assumes a more than ordinarily authoritative character, inasmuch as it utters not only a judgment founded upon the language of that instrument, but speaks the sentiment which dictated that language itself.

I may perhaps be pardoned in alluding to one other point, in this discussion, of the binding obligation of the laws of slavery; and that is, this early and most marked resort to the "higher law," as it has been called in modern phrase. No more direct appeal to such a law could well be made, than that in which eminent counsel indulged, in this language I have quoted, in connection with the paramount obligation of the Constitution, in the formation of which he had taken a part, and in the presence of judges who had shared with him in that office.

In conclusion, I have only to add, that I have been induced to present these original memoranda of this cause, in connection with the circumstances under which it arose and was decided, that the true relation which our fathers held to slavery in Massachusetts might be understood, and not from any wish to utter a word upon a subject which could add to the excitement which it has already awakened.

It is simply the detail of an historic fact, which it is due to the historic fame of Massachusetts should be fully known and understood. If it does no more, it shows that descendants of Africans had the rights of free citizens in Massachusetts, years before the Constitution of the United States had been framed, or even conceived of; and history would confirm the position, that many of this very class voted as citizens, upon the election of the members of the Convention which adopted it, and in that way may have been the means of securing its adoption.

On motion of Mr. LIVERMORE, it was voted that the Cabinet-keeper be requested to report at the next stated meeting in relation to the present condition and future wants of the Society's cabinet.

A report presented by Mr. BOWDITCH, from a Committee appointed to make inquiry concerning the diary of the late Rev. JOHN PIERCE, D.D., was referred to the Standing Committee.

Rev. JAMES WALKER, D.D., President of Harvard College, was elected a Resident Member of the Society; Monsieur FRANÇOIS PIERRE GUILLAUME GUIZOT and Monsieur ALEXIS DE TOCQUEVILLE were elected Honorary Members; and WILLIAM DURRANT COOPER, F.S.A., of London, a Corresponding Member.

On motion of the Librarian, voted that Messrs. Shurt-

leff, Livermore, and Deane be a Committee to advise and assist the Librarian in completing the arrangement and classification of the books in the Dowse Library.

JUNE MEETING.

The Society held their stated monthly meeting on Thursday, June 11, at noon, in the Dowse Library; the President, Hon. ROBERT C. WINTHROP, in the chair.

The Librarian announced donations from the Society of Antiquaries, London; the American Philosophical Society, Philadelphia; the Trustees of the Astor Library, New York; Messrs. Little, Brown, and Co.; Thomas M'Ewen, Esq., Secretary-General of the Society of the Cincinnati; Dr. Samuel H. Hurd, Somerville; Hugh B. Grigsby, Esq., Washington, D.C.; and from Messrs. Deane, Parkman, Shurtleff, Sibley, Warren, and Winthrop, of the Society.

The President announced that he had taken the liberty to extend an invitation, officially, to the American Antiquarian Society, at their late semi-annual meeting in Boston, and also to the General Society of the Cincinnati, at their first triennial meeting held in this city since their institution in 1783, to visit the Society's rooms, and view the Dowse Library; that both these societies had accordingly been received, and the various colonial and revolutionary memorials in the Society's cabinet exhibited to them.

The President communicated to the Society a letter from the American Minister at London, conveying the